

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN EDWARD CARTER and  
MARGARETA KUNIGUNDA CARTER,

Plaintiffs,

v.

DEPARTMENT OF THE ARMY, BOARD  
FOR THE CORRECTION OF MILITARY  
RECORDS,

Defendant.

Case No. C07-05433-RJB

ORDER DISMISSING ACTION  
WITHOUT PREJUDICE

This matter comes before the Court on review of the file. The Court has considered the file herein.

On August 20, 2007, Plaintiff John Edward Carter and Plaintiff Margareta Kunigunda Carter (“Plaintiffs”) filed the complaint. Dkt. 1. On January 28, 2008, the Court ordered that:

not later than February 25, 2008, Plaintiffs must either **PROVIDE PROOF OF SERVICE** to the Court or show cause why an extension to provide service should be granted. The proof of service must be consistent with the procedures outlined above. If Plaintiffs fail to provide proof of service by February 25, 2008, or show cause for an extension, the Court will dismiss this case without prejudice.

Dkt. 18.

On February 21, 2008, Plaintiff John Carter submitted a response to that order. Dkt. 19. Attached to that response, Mr. Carter submitted a copy of what appears to be a certified mail receipt showing that only the Department of the Army had been served. Dkt. 19-2 at 3. Mr. Carter also stated that a recent traffic accident had hindered his ability to pursue his obligations related to this case. Dkt. 19 at 2.

On April 21, 2008, the Court issued another Order to Provide Proof of Service because Plaintiff’s proof of service was insufficient. Dkt. 21. In that order, the Court stated that Mr. Carter’s traffic accident was sufficient cause not to dismiss the complaint. Dkt. 21 at 2. The Court then ordered that:

not later than May 2, 2008, Plaintiffs must either **PROVIDE PROOF OF SERVICE** to the Court or show cause why an extension to provide service should be granted. The proof of service must be consistent with the procedures outlined above. If Plaintiffs fail to provide proof of service by May 2, 2008, or show cause for an extension, the Court will dismiss this case without prejudice.

Dkt. 21 at 2-3.

On April 29, 2008, Mr. Carter submitted a response to the second Order to Provide Proof of Service. Dkt. 22. Plaintiffs have not submitted evidence that they have served either the Attorney General of the United States or the United States Attorney for the Western District of Washington.

Under Federal Rule of Civil Procedure 4, the plaintiff is responsible for having the summons and complaint served within 120 days after the complaint is filed. Fed. R. Civ. P. 4(b), (m). If the defendant is not served within 120 days, the Court must dismiss the action without prejudice or order that service be made within a specified time. Fed. R. Civ. P. 4(m).

Under Federal Rule of Civil Procedure 4(i), the plaintiffs must follow special procedures when they are attempting to serve the United States or an agency of the United States. Fed. R. Civ. P. 4(i). To serve an agency of the United States, the plaintiffs must serve the United States as outlined in Fed. R. Civ. P. 4(i)(1) and send a copy of the summons and of the complaint by registered or certified mail to the agency. Fed. R. Civ. P. 4(i)(2). To serve the United States, the plaintiffs must:

- (A) (i) deliver a copy of the summons and of the complaint to the **United States attorney for the district where the action is brought**--or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk--or
  - (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;
- (B) send a copy of each by registered or certified mail to the **Attorney General of the United States** at Washington, D.C.; and
- (C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed. R. Civ. P. 4(i)(1)(emphasis added).

As mentioned, Plaintiffs have not provided the Court with proof of service upon the United States attorney for the Western District of Washington or proof of service upon the Attorney General of the United States. Thus, the Defendant has not been properly served within 120 days from the date the complaint was filed. Plaintiffs have not shown cause for why the Court should provide an extension,


1 beyond the extensions that have already been granted, so that they may properly serve the necessary  
2 departments.

3 Therefore, it is hereby

4 **ORDERED** that this case is **DISMISSED without prejudice**.

5 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
6 party appearing *pro se* at said party's last known address.

7 DATED this 6<sup>th</sup> day of May, 2008.

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9 ROBERT J. BRYAN  
10 United States District Judge  
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